

**POLLUTION CONTROL HEARINGS BOARD
STATE OF WASHINGTON**

MARIANNE RASMUSSEN,

Appellant,

v.

PUGET SOUND CLEAN AIR AGENCY,

Respondents.

PCHB No. 12-091

ORDER ON MOTIONS

Appellant Marianne Rasmussen (Appellant) filed an appeal with the Pollution Control Hearings Board (Board) challenging the Puget Sound Clean Air Agency's (PSCAA) issuance of a \$4,425.00 penalty for alleged violations of outdoor burning regulations. PSCAA moved to dismiss Issues 3, 4, and 7 from the October 1, 2012 Pre-Hearing Order. The Appellant opposes PSCAA's motion, and filed three separate motions of her own: a motion to dismiss, a motion to suppress and for summary judgment regarding an unconstitutional search, and a motion for summary judgment regarding defective due process. PSCAA opposes the Appellant's motions, cross-moves for summary judgment on Appellant's motion for summary judgment, and also asks the Board to grant summary judgment in favor of PSCAA on Issue 1.

Attorneys Carolyn A. Lake and Seth Goodstein represented the Appellant. Attorney Jennifer A. Dold represented PSCAA. Board member William H. Lynch presided for the Board under the authority of RCW 43.21B.305, which allows one member of the Board to hear appeals that involve penalties of \$15,000 or less.

The Board reviewed the following pleadings submitted by the parties:

1. Puget Sound Clean Air Agency's Motion to Dismiss Pre-Hearing Order Issues 3, 4, and 7;
2. Declaration of Max Scarberry, with attached Exhibits 1 - 3;
3. Declaration of Jennifer A. Dold, with attached Exhibits A and B;
4. Appellant Marianne Rasmussen's Response in Opposition to PSCAA Motion for Summary Judgment;
5. Reply in Support of Puget Sound Clean Air Agency's Motion Regarding Issues 3, 4, and 7;
6. Appellant Marianne Rasmussen's Motion for Summary Judgment Re -- Undisputed Facts Applied to Applicable Law Requires Dismissal, with attached Exhibits 1 – 5;
7. Appellant Marianne Rasmussen's Motion to Suppress and for Summary Judgment Re – Unconstitutional Search;
8. Appellant Marianne Rasmussen's Motion to Suppress and for Summary Judgment Re - Defective Due Process;
9. Declaration of Marianne Rasmussen;
10. Declaration of Paul Rasmussen;
11. Puget Sound Clean Air Agency's Response to Appellant's Three Motions Filed on December 5, 2012 and Cross-Motion for Summary Judgment on Factual S. J. Motion;
12. Declaration of Oscar (Jay) Espinosa, with attached Exhibits 1 – 6;
13. Declaration of Rick Hess, with attached Exhibit A;
14. Second Declaration of Max Scarberry, with attached Exhibit 1;
15. Second Declaration of Jennifer A. Dold, with attached Exhibits A and B;
16. Appellant Marianne Rasmussen's Reply in Support of Summary Judgment; and
17. Second Declaration of Marianne Rasmussen, with attached Exhibit 1.

BACKGROUND

[1]

On October 3, 2011, at approximately 7:24 p.m., Graham Fire & Rescue received two complaints through 911 of a large fire in the vicinity of 4926 268th Street East in Graham,¹ Washington. Battalion Chief Oscar Espinosa approached the site from State Route 7 and could see a large fire on a parcel to the east on 268th Street East. Chief Espinosa began traveling on 268th Street East and saw two large individual fires burning in an open field behind some homes

¹ Addresses in this geographic area are sometimes also referred to as Spanaway, including on the Pierce County Assessor-Treasurer's web site. *Espinosa Decl.* at 4.

1 on 4926 268th Street East. One fire was approximately 15 by 15 feet and the other fire was
2 approximately 20 feet by 20 feet in size. The flames from both fires were approximately 25 feet
3 in the air and were clearly visible from the street. The fires were in violation of residential
4 burning requirements because only one residential fire is authorized at a time, residential fires
5 are limited in size and may be no larger than four feet in diameter and three feet in height, and
6 residential outdoor burning in this area requires a permit. *Espinosa Decl.*

7 [2]

8 Chief Espinosa exited his vehicle and met Paul Rasmussen in the vicinity of the homes
9 located on 268th Street East. Chief Espinosa explained to him that the fires were illegal and
10 stated that he needed to see the fires to assess what steps needed to be taken to assess public
11 safety and to extinguish the fires. Mr. Rasmussen explained that there were potholes and cattle,
12 including bulls, in the field where the fires were burning. Mr. Rasmussen opened the gate and
13 accompanied Chief Espinosa and other members of Graham Fire & Rescue to where the fires
14 were burning. It took three to five minutes to reach the location of the fires. It is possible that
15 the fires were burning on one or both of two adjacent parcels. *Espinosa Decl.*

16 [3]

17 Chief Espinosa confirmed that the fires were composed of natural vegetation. He also
18 determined that the fires presented no fire safety hazard and had appropriate clearances. Because
19 of the safety hazards presented by poor lighting, the potential for tripping, and uncontrollable
20 cows and bulls, Chief Espinosa determined it was safer to have the fires burn themselves out
21 rather than extinguish them by the fire department. Chief Espinosa explained to Mr. Rasmussen

1 that he could help extinguish the fires by breaking them into smaller piles as the fires burned out.

2 *Espinosa Decl.*

3 [4]

4 After returning to 268th Street East, Chief Espinosa and Paul Rasmussen met with
5 Marianne Rasmussen outside one of the residences. Chief Espinosa explained to both of them
6 why the fires were illegal, why the department had responded, and the department's plan to let
7 the fires burn themselves out. Chief Espinosa asked Mr. Rasmussen for his address, and he
8 provided the 4926 268th Street East address. Chief Espinosa took photographs of the illegal fires
9 and prepared an incident report, which used the address provided by Mr. Rasmussen as the
10 location of the burning. *Espinosa Decl.*

11 [5]

12 Graham Fire & Rescue is the permitting agency for residential outdoor burn permits in
13 this area. Neither Paul nor Marianne Rasmussen had a permit from the department for the fires
14 that burned on October 3, 2011. On October 5, 2011, Ms. Rasmussen obtained two burn permits
15 for residential outdoor burning from the department. One permit was for 4919 268th Street East,
16 and the other permit was for 4926 268th Street East. *Espinosa Decl.*

17 [6]

18 After receiving the incident report from Graham Fire & Rescue, PSCAA Inspector Max
19 Scarberry searched the property records on the Pierce County Assessor's web site for the
20 property address listed in the incident report. The web site showed Marianne Rasmussen as the
21 taxpayer and owner of 4926 268th Street East in Graham. *Second Scarberry Decl.*

1 [7]

2 PSCAA is the agency responsible for issuing permits for agricultural burning in this area.
3 Applicants for these permits must meet certain criteria, and agricultural burning may only
4 lawfully occur after a permit is received. Rick Hess, a Supervising Inspector at PSCAA,
5 checked PSCAA's records and saw that no agricultural burn permits were issued to Marianne
6 Rasmussen or Paul Rasmussen, or to the 4919 or 4926 268th Street East, Spanaway addresses.
7 *Hess Decl.*

8 [8]

9 On October 26, 2011, PSCAA issued Notice of Violation No. 3-006154 (NOV) to the
10 Appellant. The facts alleged in the NOV are that on October 3, 2011, at approximately 7:38
11 p.m., the Appellant caused or allowed two unlawful land clearing fires at 4926 268th St. E, Parcel
12 #0318254702 in the Spanaway area of unincorporated Pierce County. The NOV further states
13 that land clearing burning is prohibited in Pierce County, and that the fires were conducted
14 without a valid permit from Graham Fire & Rescue. *Scarberry Decl., Ex. 1.*

15 [9]

16 The NOV contains boxes, which when checked by the PSCAA Inspector, indicate
17 violations of particular provisions of PSCAA or State regulation. The boxes checked in this
18 NOV issued to the Appellant are, as follows:

19 Violation of Regulation I, Section(s):

- 20 - 8.04(a) Failure to comply with the provisions of Chapter 173-425 WAC.
21 - 8.13(a) Land Clearing Burning in Pierce County.

1 Other (Chapter 173-425 WAC, Order of Approval, etc.):

- 2 - 173-425-040(5) Outdoor Burning of organic refuse in a designated area with a
3 reasonable alternative to burning.
4 - 173-425-050 Outdoor Burning without a valid permit.
5 - 173-425-060(2)(b) Land clearing burning without a valid permit.

6 *Scarberry Decl., Ex. 1.*

7 [10]

8 The NOV contained a Corrective Action Order, which required the Appellant to submit a
9 written report to PSCAA within 10 days of receipt of the NOV. The Corrective Action Order
10 stated the report must describe the action taken to correct the violation and achieve compliance
11 with PSCAA's regulations. The Corrective Action Order also called for the immediate ceasing
12 of all unlawful outdoor burning. *Scarberry Decl., Ex. 1.*

13 [11]

14 On November 1, 2011, the Appellant wrote a letter to Max Scarberry, who is the PSCAA
15 Inspector who issued the NOV. The Appellant acknowledged receipt of the NOV, and stated
16 that she is the owner of two adjacent parcels: Parcel #R0318254701 where the fires were lit, and
17 Parcel #R0318254702. She noted that Paul Rasmussen, who is also named in the NOV, is her
18 son and not the property owner. The Appellant further stated that they were cleaning up
19 branches and downed trees for the safety of the cattle that graze on her property. She had
20 assured her son that she would stop by the fire station in Graham to obtain the burning permit,
21 but was unable to accomplish it that day. Her son was under the impression that she had
obtained the permit. *Scarberry Decl., Ex. 2.*

1 [12]

2 On July 25, 2012, PSCAA issued Notice and Order of Civil Penalty No. 12-190CP
3 (penalty) to the Appellant in the amount of \$4,425.00 for the NOV issued on October 26, 2011.
4 *Scarberry Decl., Ex. 3.* PSCAA decided to issue a civil penalty for only one violation cited in
5 the NOV, which was causing or allowing an outdoor fire that burned without a valid permit, in
6 violation of WAC 173-425-050. *Hess Decl.*

7 [13]

8 The Appellant argues that the November letter she wrote to PSCAA in response to the
9 NOV should be suppressed because it was illegally obtained self-incriminating evidence. The
10 Appellant asserts that the Board should dismiss the penalty because the NOV and the civil
11 penalty are separate punitive responses by PSCAA and subject the Appellant to double jeopardy.
12 Furthermore, Paul Rasmussen states he would have refused entry to Chief Espinosa if Mr.
13 Rasmussen had been informed that he had the right to refuse Chief Espinosa entry. *Paul*
14 *Rasmussen Decl.* Appellant contends that dismissal is appropriate because of an
15 unconstitutional search. She also contends that dismissal is appropriate because she did not
16 engage in prescribed burn activity on the cited property, and even if the Board found that she did,
17 the activity was allowed through the exemption for agricultural burning. Finally, the Appellant
18 argues that the notice provided by PSCAA was defective and in violation of due process.
19 Appellant's arguments are discussed in the analysis section.

1 ANALYSIS

2 [1]

3 Summary judgment is a procedure available to avoid unnecessary trials where formal
4 issues cannot be factually supported and cannot lead to, or result in, a favorable outcome to the
5 opposing party. *Jacobsen v. State*, 89 Wn.2d 104, 108, 569 P.2d 1152 (1977). The summary
6 judgment procedure is designed to eliminate trial if only questions of law remain for resolution.

7 The party moving for summary judgment must show there are no genuine issues of
8 material fact and the moving party is entitled to judgment as a matter of law. *Magula v. Benton*
9 *Franklin Title Co., Inc.*, 131 Wn.2d 171, 182, 930 P.2d 307 (1997). A material fact in a
10 summary judgment proceeding is one affecting the outcome under the governing law. *Eriks v.*
11 *Denver*, 118 Wn.2d 451, 456, 824 P.2d 1207 (1992). If the moving party satisfies its burden,
12 then the non-moving party must present evidence demonstrating that material facts are in
13 dispute. *Atherton Condo Ass'n v. Blume Dev. Co.*, 115 Wn.2d 506, 516, 799 P.2d 250 (1990),
14 *reconsideration denied* (1991). A non-moving party may not oppose summary judgment by
15 nakedly asserting that there are unresolved factual questions. *Bates v. Grace United Methodist*
16 *Church*, 12 Wn. App. 111, 115, 529 P.2d 466 (1974). In a summary judgment proceeding, all
17 facts and reasonable inferences must be construed in favor of the non-moving party. *Jones v.*
18 *Allstate Ins. Co.*, 146 Wn.2d 291, 300, 45 P.3d 1068 (2002). Summary judgment may also be
19 granted to the non-moving party when the facts are not in dispute. *Impecoven v. Department of*
20 *Revenue*, 120 Wn.2d 357, 365, 842 P.2d 470 (1992). There are no material facts in dispute,
21 which are necessary to resolve this matter, so summary judgment is appropriate.

1 [2]

2 The Board has jurisdiction over the subject matter and the parties pursuant to RCW
3 43.21B.110. The Board reviews the issues raised *de novo*. WAC 371-08-485.

4 [3]

5 PSCAA requests the Board to dismiss Issues 3 and 7, and for summary judgment in its
6 favor on Issues 1 and 4:

- 7 1. Did Marianne Rasmussen violate Agency Regulation I, Section 8.04(a) and WAC
8 173-425-050 by causing or allowing an outdoor fire that burned without a valid
9 permit, on or about October 3, 2011, at 4926 268th Street East, Spanaway, WA, as
10 alleged in Civil Penalty No. 12-190CP?
- 11 3. Whether PSCAA lacks jurisdiction over the type of activity alleged in this action?
- 12 4. Whether the Notice of Violation is unconstitutionally vague in that it does not
13 provide notice of the particular WAC 173-425-050 section or any section
14 incorporated therein with sufficient specificity for Appellant to prepare an adequate
15 defense?
- 16 7. Is this action barred by double jeopardy?

17 [4]

18 Appellant raises numerous constitutional issues. The Board has previously stated, and
19 the parties acknowledge, that the Board does not have jurisdiction over a facial challenge to the
20 constitutionality of a statute or regulation, but will construe a statute in a manner that presumes it
21 is constitutional. When ruling on an “as applied” challenge, the Board limits its jurisdiction to
addressing procedural defects or issues that arise in particular cases. The Board also has
jurisdiction over whether a challenged agency action complied with applicable laws. The

1 Board's consideration of an agency's compliance with statutes and regulations may, accordingly,
2 also dispose of procedural due process claims which assert noncompliance with those laws.

3 *First Romanian Pentecostal Church of Kenmore v. Ecology*, PCHB Nos. 08-098 & 08-099
4 (Order on Summary Judgment, May 22, 2009) (discussing *Cornelius v. Ecology*, PCHB No. 06-
5 099, Order on Summary Judgment as Amended on Reconsideration, January 18, 2008).

6 Because there is some overlap between the issues listed in PSCAA's Motions and the
7 issues listed in the Appellant's Motions, the Board will group similar issues together in its
8 analysis.

9 Issue 3 – Whether PSCAA Lacks Jurisdiction Over the Activity

10 [5]

11 PSCAA initially asked the Board to dismiss Issue 3 on the basis that it was a facial attack
12 on the validity of Regulation I, Sec. 8.04. The Appellant denies it is attacking the validity of the
13 PSCAA regulation, but instead is questioning its application in this case. Appellant questions
14 whether PSCAA may enforce outdoor burning rules against the Appellant through WAC 173-
15 425, when the agricultural burning provisions of WAC 173-430 are applicable to the burning
16 activity in question. Appellant maintains that the agricultural burning provisions apply because
17 the property is zoned agricultural and was being used for agricultural activities. As PSCAA
18 observes in its Reply,² it is the permitting agency for agricultural burning in the region, and
19 certain requirements must be met before a person may conduct agricultural burning. The
20

21

² PSCAA Reply at 3, n.1.

1 Appellant neither received a permit for agricultural burning from PSCAA, nor contacted the fire
2 department before the burning occurred in order to qualify for unpermitted agricultural burning
3 pursuant to WAC 173-430-020(5) and RCW 70.94.6524(7). In fact, the Appellant obtained two
4 burn permits for residential outdoor burning two days after the burning occurred. Because the
5 zoning and use of the property for agricultural purposes do not by themselves trigger the
6 applicability of the agricultural burning provisions, and other issues in the case duplicate the
7 arguments raised by the Appellant, the Board dismisses Issue 3 from the case.

8 [6]

9 In ruling on Issue 3, the Board did not consider Appellant's argument that
10 WAC 173-425-050 is not enforceable because it references repealed state statutes. This
11 constitutes a facial challenge on the validity of this regulation and is not properly within the
12 jurisdiction of the Board. The Board also did not consider the Appellant's reference to an
13 unproven prior violation having been used by PSCAA in determining the penalty. The record
14 does not reflect that a prior violation was considered in establishing the amount of the penalty,
15 and in any event, the absence or existence of a prior violation is more appropriately discussed
16 under the reasonableness of the penalty.

17
18 Appellant's Motion for Summary Judgment Re - Undisputed Facts

19 [7]

20 The Appellant argues that summary judgment in her favor is appropriate because PSCAA
21 cited the wrong parcel and the wrong person, and any burning that occurred was exempt

1 agricultural burning. PSCAA responds by stating that: the Appellant Marianne Rasmussen owns
2 the properties on 4919 and 4926 268th Street East in Spanaway; her son Paul Rasmussen lit the
3 unpermitted fires on property owned by her; the Appellant was present when the burning
4 occurred; the Appellant was aware of the need for a permit; and that she obtained the burning
5 permits two days later.

6 [8]

7 As PSCAA correctly states, the Board has repeatedly held property owners liable for
8 burning violations on their property even when the owners were not the actual burners or even
9 present at the time. The Board has observed that the Washington Court of Appeals has applied
10 strict liability regarding violations of the Washington Clean Air Act. *Scheppe v. Puget Sound*
11 *Clean Air Agency*, PCHB No. 07-004 (2007) (citing *Wm. Dickson Co. v. PSAPCA*, 81 Wn. App.
12 403, 409-10 (1996)); *Opdahl v. Olympic Region Clean Air Agency*, PCHB No. 09-142 (2010);
13 *Leppell v. Olympic Region Clean Air Agency*, PCHB No. 08-102 (2009). Despite Chief Espinosa
14 identifying Paul Rasmussen as the homeowner and using the address that Paul Rasmussen
15 provided him in his incident report, which was later used by PSCAA in the NOV, it is still clear
16 under the facts of this case that Ms. Rasmussen was aware of the burning activity and “caused or
17 allowed” the burning to take place on her property without a permit. Appellant’s motion for
18 summary judgment regarding undisputed facts is denied.

1 Issue 1 - Whether the Appellant Committed the Alleged Violation

2 [9]

3 PSCAA's response to Appellant's motions includes a cross-motion for summary
4 judgment on Issue 1. PSCAA argues that the undisputed facts show that the Appellant caused or
5 allowed outdoor burning without a permit on property she owns. Because the Board believes
6 some more information is needed regarding the agricultural burning regulations in order to have
7 a complete record to rule upon, the Board denies summary judgment to PSCAA on Issue 1.
8

9 Issue 4 – Adequacy of Notice/Appellant's Motion Re- Defective Due Process

10 [10]

11 Appellant declares that the NOV does not offer a procedure for citizens to bring errors to
12 the attention of PSCAA. The Appellant also contends that the NOV contains blanket references
13 to various administrative rules, and that PSCAA should not be able to make such sweeping
14 references and then pick and choose which subsections to enforce. Appellant further argues that
15 due process requires notice reasonably calculated to apprise the parties of the nature and
16 character of the proceedings which will affect them so they may adequately prepare for hearing.
17

18 [11]

19 As PSCAA observes, the Appellant's arguments are misplaced. The Appellant had
20 numerous options once the NOV was issued, including appealing the Corrective Action to the
21 Board. PSCAA cited one violation in the penalty, which was burning without a permit. The
NOV states that fires were conducted without a valid permit from the fire department. The

1 NOV cites to PSCAA and state regulations which describe outdoor burning without a permit as
2 unlawful. Chief Espinosa spoke to the Appellant and her son the night of the fires and expressly
3 told her why the fires were illegal, and the need to obtain burn permits. Ms. Rasmussen obtained
4 two residential burn permits two days after the incident. Ms. Rasmussen sent a follow-up letter
5 to PSCAA following the issuance of the NOV in which she indicated that she had meant to get
6 the burn permits but was not able to accomplish it before the burning began. There is no
7 indication that the Appellant did not understand the alleged violation. She had every opportunity
8 to appeal both the Corrective Action Order and the penalty. The Board concludes she was
9 provided constitutionally adequate notice. *Walker Specialty Construction, Inc. v. Puget Sound*
10 *Clean Air Agency*, PCHB No. 02-126 (2003). The Board grants summary judgment to PSCAA
11 on Issue 4, and denies Appellant's Motion to Dismiss Re: Defective Due Process.

12
13 Issue 7 – Double Jeopardy

14 [12]

15 Appellant maintains that PSCAA's issuance of the NOV and the penalty places the
16 Appellant in double jeopardy in violation of the 5th Amendment of the United States Constitution
17 and Art. I, Sec. 9, of the Washington State Constitution. Article I, Sec. 9 provides: "No person
18 shall . . . be twice put in jeopardy for the same offense." The Washington Courts have
19 interpreted the words used in Article I, Sec. 9 and the 5th Amendment to the United States
20 Constitution in the same way. The purpose of the doctrine is to protect the accused from being
21 twice put in jeopardy for the same offense. *State v. Ridgely*, 70 Wn.2d 555, 557, 424 P.2d 632

1 (1967). Appellant argues that double jeopardy applies to civil matters when two government
2 enforcement actions cover the same transaction and are punitive in nature. PSCAA responds that
3 the NOV is not a separate enforcement action, but instead, the first step in an enforcement action
4 which may lead to the issuance of a penalty. The NOV and civil appeal procedures applicable to
5 the case have been established by the Legislature. See RCW 70.94.211, 70.94.221, and
6 70.94.431. *PSCAA's Response* at 15-16.

7 [13]

8 In support of her double jeopardy claim, Appellant maintains that PSCAA's NOV
9 required her to submit a "confession" in violation of her right against compulsory self-
10 incrimination. Appellant asks that Ms. Rasmussen's letter, dated November 1, 2011, written in
11 response to the NOV be suppressed. PSCAA observes that a NOV offers numerous options to a
12 potential violator, and that Ms. Rasmussen voluntarily chose to write back to PSCAA. The
13 Board agrees with PSCAA that Ms. Rasmussen voluntarily chose to respond to PSCAA and that
14 suppression of the letter is not justified. The Board will consider this letter as part of the
15 evidence in this case.

16 [14]

17 The Board is aware of only one instance when a quasi-judicial board within the
18 Environmental and Land Use Hearings Office addressed a double jeopardy issue raised by the
19 parties. In 2002, the Forest Practices Appeals Board³ reviewed the issue of whether a plaintiff
20 could be subject to a notice to comply issued by the Department of Natural Resources, when the

21 ³ The Forest Practices Appeals Board was abolished and its jurisdiction transferred to the Pollution Control Hearings Board in 2010. See Laws of 2010, chapter 210, section 41.

1 plaintiff was being criminally prosecuted in district court for the violation. The Board found
2 double jeopardy inapplicable to that situation. *Pallogi v. Department of Natural Resources*,
3 FPAB 02-006 (Order Granting Summary Judgment, 2002). Appellant's contention that the
4 separate NOV and penalty provisions place the Appellant in double jeopardy appears to the
5 Board to be a facial challenge to the statutes establishing this very process. The Board declines
6 to assert jurisdiction over Issue 7 and dismisses it from the case.

7
8 Motion Re – Unconstitutional Search

9 [15]

10 Appellant argues that because Chief Espinosa failed to inform Paul Rasmussen that he
11 could refuse entry to the fire department to inspect the burn piles, this constitutes an
12 unconstitutional search, and all of PSCAA's gathered evidence should be suppressed. The
13 outdoor burning, however, was clearly observed by Chief Espinosa as he drove down 268th
14 Street East. He was able to see from a public roadway that the fires were illegal in size and in
15 number. Furthermore, Graham Fire & Rescue had no request for burn permits in its data base.
16 Likewise, PSCAA did not have any requests for agricultural burn permits in its data base. There
17 are sufficient facts to establish that burning occurred without a permit, so there is no need to
18 further address the Appellant's claim of an unconstitutional search. The Board denies
19 Appellant's motion to suppress evidence.

1 Based on the foregoing analysis, the Board enters the following:

2 **ORDER**

3 1. The Board GRANTS the Puget Sound Clean Air Agency's Motion to Dismiss
4 Legal Issues 3 and 7.

5 2. The Board GRANTS Summary Judgment to the Puget Sound Clean Air Agency
6 on Issue 4, and DENIES Summary Judgment to the Puget Sound Clean Air Agency on Issue 1.

7 3. The Board denies Appellant's Motions.

8
9 SO ORDERED this 14th day of January, 2013.

10 **POLLUTION CONTROL HEARINGS BOARD**

11 William H. Lynch, Presiding
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